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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,693	09/08/2008	Johann Magg	2004P00165WOUS	8203

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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NEW BERN, NC 28562

EXAMINER

SPURLOCK, BRETT SHANE

ART UNIT	PAPER NUMBER
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3742

NOTIFICATION DATE	DELIVERY MODE
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08/02/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

Office Action Summary	Application No. 10/586,693	Applicant(s) MAGG ET AL.	
	Examiner BRETT SPURLOCK	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22,26,27,29,30,32,33,35 and 42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 22,26,27,29,30,32,33,35 and 42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 22, 26-27, 29, 30, 35 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Liverani (US 5738001 A) (hereinafter Liverani).

Liverani discloses a method for controlling (14A “control system”) heating processes in a coffee machine (see Fig. 1-3 and/or title) which is (particularly) suitable for preparing coffee on the basis of coffee pads (see col. 1, line 15), wherein the coffee machine comprises a continuous flow heater (7) having an adjustable heating power (15 and see col. 1, lines 23-26) and a pump (6) for conveying water through the continuous flow heater, the method comprising the acts of: measuring a first temperature (col. 4, lines 48-55) between the continuous flow heater (7) and a brewing chamber (3) (to be performed by sensor shown in Fig. 3; 13); measuring a second temperature (col. 6, lines 10-19) between the pump (6) and the continuous flow heater (7) (to be performed by sensor shown in Fig. 3; 13A); and influencing at least one of the amount of water conveyed by the pump and the heating power in response to the first and second temperatures (as described in col. 1, line 9 - col. 2, line 31; col. 4, lines 48-55; col. 4, lines 28-37 and also, again, see col. 6, lines 10-19); an electronic control device (14A) for controlling heating process in a coffee machine for preparing coffee using coffee

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pads (col. 5, lines 61-62); a second temperature sensor (Fig. 1, 3; 13) located between the continuous heater and the brew chamber (3) which measures a second temperature (also see col. 4, lines 3-15) and influencing at least one of the amount of water conveyed by the pump and the heating power in response to the second temperature (col. 4 line 60 - col. 5 line 50); the pump is pulsed and will pump for a longer time when the temperature is higher (col. 4, lines 3-16 and) ; the time that the pump is on will vary based on the temperature desired and/or the temperatures measured at the sensors (13 and 13a) (as described in col. 5, lines 3-50); includes means for clocked operation of the pump (col. 4, lines 16-27; and see col. 1, lines 30-44).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liverani as applied to claims 22-30 above, and further in view of Harrison (US 5417152 A) (hereinafter Harrison).

Liverani discloses the claimed invention except for a means for restricting fluid flow.

Harrison discloses a potentiometer slider (324) which controls the speed of the flow based on the pressure output as influenced by the voltage setting (col. 9, lines 3-8).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the fluid control system disclosed by Liverani by incorporating a slider as disclosed by Harrison to vary the fluid output of the pump.

5. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liverani as applied to claim 29 above.

Liverani discloses the claimed invention except for multiple heating elements.

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate additional and/or a plurality of heating elements since it has been held that mere duplication of essential working parts of a device involve only routine skill in the art. Applicant may refer to *In re Regis Paper Co. v. Bemis Co*, 193 USPQ 8, *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) and see MPEP 2144.04, Section VI.

Response to Arguments

6. Applicant's arguments filed 7/11/2011 have been fully considered but they are not persuasive.

Applicant argues that the Liverani does not disclose the ability to influence the functionality of the pump and/or the continuous flow heating system based on the signals provided from a first and second temperature sensor. Specifically, Applicant appears to not be convinced that Liverani discloses “an influencing (of) **at least one of** the water conveyed by the pump and the heating power in response to the amount of water conveyed by the pump and the heating power in response to the first and second temperatures.” Applicant is mistaken.

As cited in col. 6, lines 11-19 Liverani discloses, "The control system 14A will therefore be fitted with a unit able to control the function of the pump as a function of the difference between the water temperature detected at the exit of the heat exchanger and the water temperature detected at the entry to the heat exchanger." **Thus Liverani discloses the ability to control the pump based on the input signals provided from a first and second temperature sensors.**

As cited in col. 4, lines 28-37, "The system 14A acquires signals from the delivery counter means 12 and from the temperature sensor 13 by means of auxiliary devices 14.2 and 14.3 and sends them to the programmed control unit 14.1 that, by using a suitable transferal function, determines the time for the feeding of electricity to devices 24 and 15 that respectively control the functioning of the vibrating pump 6 and the feeding of the electric resistor 8 of the heat exchanger 7 by means of units 14.4 and 14.5 in order to maintain the water exiting the heat exchanger at the reference temperature." **Thus Liverani discloses the ability to control the pump based on the input signals provided from a first temperature sensors.** Furthermore, it is noted that Liverani has not yet introduced the concept of utilizing a second temperature sensor (as indicated by element 13A) and specifically states that "Fig. 3 is no more than the diagram shown in Fig. 1 with the addition of a temperature sensor 13A that touches duct 2, and connected to unit 14A by means of wire 18A, upstream and close to heat exchanger 7." Liverani implies that the functionality of the embodiment disclosed in Fig. 3 will be identical to that of Fig. 1 except that there will be an additional signal supplied from the temperature sensor 13A. Thus **even if applicant were to rephrase claim 22**

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to require, 'An influencing of **both** the water conveyed by the pump and the heating power in response to the amount of water conveyed by the pump and the heating power in response to the first and second temperatures" **the claimed invention would still not be patentable.**

Conclusion

7. This is an RCE of applicant's earlier application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRETT SPURLOCK whose telephone number is (571)270-1387. The examiner can normally be reached on M-F, 9:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 5712724780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRETT SPURLOCK/
Examiner, Art Unit 3742

/Henry Yuen/
Supervisory Patent Examiner,
TC 3700

7/28/2011